IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.361 of 2003.

Reserved on: 29.05.2007.

Decided on: *July 09, 2007*

Naro Devi alias Nar Dei & Ors. ***.....Appellants.***

VERSUS

Ram Swaroop & & Ors. ***.....Respondents.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants:	**Mr.Tara Singh Chauhan, Advocate for the appellants.**
For Respondents:	**Mr.Hardeep Verma, Advocate for respondent No.1.**
	Mr.Raj Kumar Negi vice Mr.J.L. Bhardwaj, Advocate for respondent No.2.
	Mr.Harish Behl, Advocate for respondent No.3.

Kuldip Singh, Judge

The claimants / petitioners are in appeal against award dated 3.6.2003 passed by learned Motor Accident Claims Tribunal, Bilaspur in M.A.C. Case No.11 of 2001 dismissing the claim petition. The parties are referred herein in the same manner as in the impugned award.

2. The facts, in brief, as alleged in the petition, are that on 19.10.2000 Daulat Ram was driving scooter and was coming from

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ? Yes***

Chharol and when he reached near *Jhungi Mor* on NH-21 at about 4.45 P.M. truck No.HP-13-0760 loaded with apples was going towards Kiratpur and hit scooter as a result of which Daulat Ram was crushed by the rear tyre of the truck on driver side and died on the spot. The accident had taken place due to rash and negligent driving by the driver of the truck. Respondent No.1 was the owner and respondent No.2 was driver of the truck at the time of accident. The deceased was 32 years of age at the time of accident and was earning Rs.6000/- per month from his business of selling buffaloes and sale of milk. He was also doing agricultural work. The petitioners are widow, children and mother of the deceased. The respondent No.3 was the insurer of the truck at the time of accident. The accident took place due to rash and negligent driving on the part of respondent No.2 but an F.I.R. was registered against the deceased in connivance with the police. The petitioners claimed Rs.10 lacs compensation jointly and severally against the respondents on account of death of Daulat Ram.

3. The petition was contested by respondent No.1 by filing reply who has taken preliminary objections of maintainability, non joinder of necessary parties, the respondent No.1 had leased out the truck to Ravinder Kumar by way of agreement dated 9.5.2000. The respondent No.1 has no connection with respondent No.2, who was employed by Ravinder Kumar on the truck. There was no relationship of master and servant between respondent No.1 and respondent No.2 at the time of accident. On merits, the claim of the petitioners was

denied. No specific defence regarding the cause of accident was taken by respondent No.1 except denial in general.

4. Respondent No.2 contested the petition by filing reply and took preliminary objections of maintainability, vagueness of the petition, mis-joinder and non-joinder of necessary parties. The owner and insurer of scooter bearing registration No.HIB-800 are necessary parties, accident took place due to rash and negligent driving of the deceased. The truck was insured with respondent No.3, therefore, liability, if any, is of respondent No.3. On merits, the claim of the petitioners was denied. No specific defence has been taken regarding the cause of accident except that accident took place due to rash and negligent driving of the deceased. It has also been alleged that amount claimed by the petitioners is excessive.

5. Respondent No.3 contested the petition by filing reply and took several preliminary objections such as maintainability, vagueness of the petition, vehicles in question were being driven by unauthorized persons who had no valid and effective driving licences. The policy of insurance excludes such type of liability, petition is bad for mis-joinder and non-joinder of necessary parties. The owner and insurer of scooter bearing registration No.HIB-800 are necessary parties, the vehicles involved in the accident did not have valid registration and fitness certificates as well as valid route permit at the time of accident and, therefore, insurer is not liable. The insurer has not issued any policy of insurance to indemnify respondent No.1 for

any loss whatsoever. On merits, the claim has been denied. It has been alleged that amount claimed is excessive. The deceased himself was responsible for the accident. The case was registered against the deceased.

6. The learned tribunal held that accident took place due to rash and negligent driving of the scooter by the deceased and, therefore, petitioners are not entitled to any compensation. The Issue No.3 regarding non-joinder and mis-joinder of necessary parties has been decided against respondents No.2 and 3, under Issues No.4 and 5 it has been held that the truck was having valid documents and respondent No.2 was also having valid driving licence and, therefore, issues No.4 and 5 were decided against respondent No.3. In view of the findings on issue No.1, the petition was dismissed. In these circumstances, petitioners are in appeal.

7. I have heard the learned counsel for the parties and have also gone through the record.

8. The learned counsel for the petitioners has submitted that it has been proved on record that accident took place due to rash and negligent driving of respondent No.2 driver of truck No.HP-13-0760 and not by the negligence of the deceased. The deceased was 32 years of age and was earning about Rs.6000/- per month and, therefore, petitioners are entitled to compensation accordingly, as prayed. The learned counsel appearing for the respondents has supported the impugned award. The respondent No.2 in his reply has

not taken any specific defence regarding the cause of accident except that the accident took place due to rash and negligent driving of scooter by deceased Daulat Ram at the time of accident. The petitioner No.1 has appeared as PW-1 and has supported her case in general. She has stated that her husband died in accident on 19.10.2000 involving truck near *Jhungi Mor.* The deceased was earning about Rs.6000/- per month. The petitioners are widow, children and mother of the deceased and were dependant on him. PW-2 Ram Lal, an eye witness of the accident, has stated that he was taking tea at roadside stall of Sita Ram, truck No.HP-13-0760 came from Bilaspur side and was going towards *Swarghat.* The accident took place at a distance of 200 feet from the shop of Sita Ram. The rear tyre of driver side of the truck crushed Daulat Ram. There was sufficient space on the left side of the truck for crossing the vehicles. The accident took place due to rash and negligent driving of the driver of the truck who was driving the truck on the wrong side. He has also stated that there was sufficient space on the right side of the truck for crossing the vehicle. The respondent No.2 has appeared as RW-1 and has stated that when he was driving truck No.HP-13-0760 and reached *Jhungi Mor* two scooterists were coming from the opposite side. One scooter overtook another scooter in high speed and its driver could not control the scooter and struck against the rear portion of his truck and fell down and died on the spot. In cross examination,

he has admitted that road on the spot was 50 feet wide and there is a slight curve on the spot.

9. Ext.PA is the copy of F.I.R. registered on 19.10.2000 at Police Station, Sadar Bilaspur under Sections 279, 304-A IPC at the instance of Govind Singh, Cleaner of truck No.HP-13-0760 but Govind Singh has not appeared as a witness from either side. Ext.PF is the school leaving certificate of Daulat Ram in which his date of birth has been shown 4.1.1968, Mark 'X' is the complaint of petitioner No.1 to Director General of Police, Himachal Pradesh. Ext.R-1 is the registration certificate of truck No.HP-13-0760. Ext.R-4 is the driving licence of respondent No.2 Amba Dutt and Ext.RA is the policy of truck No.HP-13-0760.

10. The tribunal has held that driving licence of deceased Daulat Ram for driving scooter has not been produced, Daulat Ram was driving the scooter rashly and negligently as a result of which he struck against the right rear tyre of the truck and suffered injuries leading to his death. The tribunal has also observed that claimants / petitioners could not claim compensation against the insurer of the scooter, therefore, they have filed the petition attributing negligence to respondent No.2.

11. The findings returned by tribunal are not in consonance with the evidence on record. There is no issue that Daulat Ram was not holding licence for driving the scooter. The issue before the tribunal was whether respondent No.2 was negligent or not while

driving the truck at the time of accident. A licence is required for driving a motor vehicle under the Act and necessary consequence flows in law if a person drives a motor vehicle without licence, but there is no presumption that in absence of licence a person is necessarily negligent while driving a vehicle. The parties were not at issue regarding the licence of deceased Daulat Ram for driving the scooter and probably for that reason the driving licence of deceased Daulat Ram was not produced by the petitioners. PW-1, Smt.Nar Devi, widow of Daulat Ram, has denied that her husband did not know how to drive scooter. The tribunal has not properly appreciated Mark 'X' complaint of petitioner No.1 to Director General of Police, Himachal Pradesh. The fact cannot be ignored that petitioner was not present at the time of accident, therefore, learned tribunal erred in over emphasizing Mark 'X' for contradicting the petitioner.

12. The tribunal has not properly appreciated statement of PW-2 Ram Lal, eye witness of the accident and statement of respondent No.2 Amba Dutt who appeared as RW-1. It has come in the statement of RW-1 that road is about 50 feet wide on the spot and has slight curve at the place of accident. The scooter struck against the rear tyre of the truck as a result of which Daulat Ram died on the spot. The vehicles could pass from right and left sides of the truck meaning thereby the truck was at least somewhere in the centre of the road and not on its left side when it was going from Bilaspur to Swarghat. RW-1 has stated that deceased Daulat Ram overtook

another scooter and in that process he lost his balance and struck against the rear tyre of the truck on the driver side and he died on the spot. This is not the pleaded case of respondent No.2 nor this was put to PW-2 Ram Lal when he appeared as witness. RW-2 has admitted that there is a slight curve on the spot. PW-2 Ram Lal has specifically stated that accident took place due to high speed and wrong side driving of the truck. The truck was coming on its wrong side and when Daulat Ram came on scooter from the opposite side there was not enough space for the scooter to cross and, therefore, scooter struck against the rear portion of the truck. The driver of the truck was driving the truck negligently by not leaving sufficient space for the opposite side traffic. The truck was on wrong side and not on its left side. The driver of the heavy vehicle is supposed to be extra careful more particularly in hilly area. Therefore, from the material on record it can be safely concluded that the accident took place due to rash and negligent driving on the part of the respondent No.2 the driver of truck No.HP-13-0760. The contrary findings of the tribunal are set aside.

13. Now, the question is regarding the quantum of compensation. The PW-1 has stated that her husband was earning Rs.6000/- per month from selling buffalos and milk. There is no corroborative evidence to this effect on record but the fact remains that deceased was doing some work, he must be earning Rs.2500/- per month. He must be spending about Rs.500/- on himself, therefore, the dependency of the petitioners is taken Rs.2000/- per month. The

deceased was 32 years of age at the time of accident as per school leaving certificate Ext.PF. Therefore, multiplier of 14 is applicable in the present case. The petitioners are, thus, entitled to compensation of Rs.3,36,000/- i.e. (Rs.2000 x 12 x 14= Rs.3,36,000/-). They are also entitled to lump sum amount Rs.20,000/- on account of loss of consortium, natural love and affection and Rs.10,000/- on account of funeral expenses and for performing last rites of the deceased. Thus, the total compensation comes to Rs.3,66,000/-. The petitioners are also entitled to 9% interest per annum on Rs.3,66,000/- from the date of filing of the petition i.e. 28.2.2001 till deposit / payment. The truck No.HP-13-0760 was insured with respondent No.3 vide policy Ext.RA and respondent No.2 was also having valid driving licence, route permit, fitness certificate as held by the tribunal while deciding issues No.4 and 5. Therefore, respondents are jointly and severally liable to pay the aforesaid amount of compensation along with interest to the petitioners, but since the truck was insured with respondent No.3, therefore, respondent No.3 insurer shall pay the entire compensation amount along with interest to the petitioners.

14. The amount of compensation to the heirs of deceased Daulat Ram is apportioned as under:-

(i) Petitioner No.1 Smt.Naro Devi (widow) =Rs.1,66,000/-

(ii) Petitioner No.2 Mukesh (son) =Rs.75,000/-

(iii) Petitioner No.3 Anjana Devi (daughter) =Rs.75,000/-

(iv) Petitioner No.4 Smt.Bhikho Devi (mother) =Rs.50,000/-

15. In view of the above discussion, the appeal is allowed and the impugned award is set aside. The petitioners are awarded Rs.3,66,000/- compensation on account of death of Daulat Ram along with 9% interest per annum from the date of filing of the petition i.e. 28.2.2001 till deposit / payment which is to be paid jointly and severally by respondents No.1 to 3 to petitioners as per their shares mentioned above, but since the truck No.HP-13-0760 was insured at the time of accident with respondent No.3, the United India Insurance Co. Ltd. Dharampur, therefore, respondent No.3 insurer shall pay the entire compensation amount along with interest to the petitioners as per their shares. No costs.

(Kuldip Singh)
Judge.

July 09, 2007
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